

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Abingdon Division

THE CITY OF BRISTOL,
TENNESSEE,

Plaintiff,

v.

THE CITY OF BRISTOL, VIRGINIA,

Defendant.

CIVIL ACTION NO.
1:22cv23

TRANSCRIPT OF PROCEEDINGS

(MOTION HEARING)

Abingdon, Virginia

June 13, 2023

BEFORE: THE HONORABLE JAMES P. JONES,
United States Senior District Judge

APPEARANCES:

For the Plaintiff:

ERWIN LYNN DOUGHERTY, ESQ.
E. Lynn Dougherty, Attorney at Law
131 Eighth Street
Bristol, TN 37620

MICHAEL EDWARD LACY, ESQ.
ANDREA WEST WORTZEL, ESQ.
Troutman Pepper Hamilton Sanders LLP
1001 Haxall Point, Suite 1500
Richmond, Virginia 23219

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 Appearances Continued:

2 For the Defendant: JUSTIN DAVID HOWARD, ESQ.
3 CHRISTIAN EDMUND HENNEKE, ESQ.
4 McGuire Woods LLP
5 Gateway Plaza
6 800 East Canal Street
7 Richmond, VA 23219
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Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23

I N D E X

DEFENDANT'S
WITNESSES

PAGE

RANDALL EADS

Direct Examination By Mr. Howard

13

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 (Proceedings commenced at 10:00 a.m.)

2 THE COURT: Good morning, ladies and gentlemen. The
3 clerk will call the case.

4 THE CLERK: The City of Bristol, Tennessee v. The
5 City of Bristol, Virginia, civil docket number 1:22cv23.

6 THE COURT: We're here today for a hearing on the
7 proposed consent final decree pursuant to a settlement of the
8 parties in this case.

9 As I indicated in my order entered May 1st, this
10 Court must approve the settlement and the proposed judgment
11 because the parties request that the terms of the settlement
12 be included in a judgment which the Court could enforce by
13 its powers.

14 As I've indicated, I'll be glad to hear any
15 statements from members of the public as to the proposed
16 settlement and consent decree, and then I'll hear from
17 counsel.

18 So are there any members of the public who wish to
19 advise the Court as to their position?

20 Yes, sir, if you'd come forward and just stand at
21 this lectern here in front of you, and if you would state
22 your name, please.

23 MR. KELLOGG: Thank you, Your Honor. My name is
24 Joel Kellogg. I'm a resident of Bristol, Tennessee, in the
25 Fairmont neighborhood.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 I'm a passionate guy, and this is a passionate
2 subject, so bear with me. I sometimes have trouble with
3 these. I'm the current president of Hope for Bristol. Thank
4 you for allowing public comment on this proposed consent
5 order.

6 I'm here today representing our organization as well
7 as all residents of Bristol, Virginia, and Bristol,
8 Tennessee, who, through no fault of their own, live in the
9 sacrifice zone. The sacrifice zone was established in 1996
10 when the Virginia Department of Environmental Quality
11 approved the permit for this failed quarry landfill.

12 We are grateful for this consent order that ensures
13 that the "Beast," as the residents refer to this landfill,
14 will never reopen. We are also grateful for the actions of
15 the Bristol, Tennessee, City Council for getting us to this
16 point.

17 However, we are dismayed and disheartened at the
18 lack of depth and protection this consent order offers our
19 residents. Limited air monitoring for a limited time and
20 basically controlled by the City of Bristol, Virginia, falls
21 far short of easing the fears of those living in the constant
22 fallout from this disaster.

23 There are no stipulations for the sensitivity of the
24 air monitoring program. Our sensitive RAMP units, custom
25 built for Hope for Bristol, measure in parts per billion. We

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 are regularly seeing readings over the minimal risk levels
2 established by the Agency for Toxic Substances and Disease
3 Registry for carbon monoxide, ammonia, and hydrogen sulfide.

4 Furthermore, the City of Bristol, Virginia, has not
5 displayed a reliable track record of sharing information
6 regarding its landfills. We are still FOIA requesting
7 documentation every two weeks. The temperature data is still
8 not being publically released, and the city's contractor
9 chooses to share much of their data with VDEQ via video calls
10 which could not be FOIA requested.

11 This is the proverbial fox guarding the hen house.
12 Permanent stationary air monitoring is more common than not
13 at similar sites around the country. There is no early
14 warning system or emergency evacuation plan. Extremely high
15 temperatures very near the surface of this landfill creates a
16 potential for rapid subsidence which could compromise the
17 landfill surface and release a cloud of toxic chemicals into
18 our community.

19 There has been zero testing for dioxins at this
20 site. It is a fact that elevated temperature of landfills
21 produce dioxins. Dioxin is the most carcinogenic substance
22 on the planet. We at Hope for Bristol anguish over the fact
23 that the fallout from this landfill covering nearly a hundred
24 square miles likely contains this substance.

25 Our children on their playgrounds and in their yards

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 pick up this fallout on their shoes and track it into homes,
2 schools, buses, churches, and vehicles. Our pets do the
3 same. This goes for everyone who lives and works within the
4 sacrifice zone that is Bristol.

5 We respectfully present during this public comment
6 period that this consent order, while a victory for our
7 residents in some ways, is woefully inadequate in its scope
8 and depth. Thank you.

9 THE COURT: Thank you very much. Anyone else? Very
10 well. It appears that there are no other comments. I
11 appreciate the comments that have been made.

12 I now will hear from counsel in support of their
13 joint motion. Yes, sir.

14 MR. DOUGHERTY: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. DOUGHERTY: May it please the Court, I rise
17 today to speak in favor of this Court approving the proposed
18 settlement order that has been achieved through mediation
19 under the tutelage of Judge Sargent.

20 Your Honor, the winds of change, both figuratively
21 and literally, are upon us, and that's good news. With that
22 wind it brings the winds of hope, hope for a better tomorrow
23 for our communities, hope for an end to an environmental
24 catastrophe, hope for reconciliation and renewed cooperation
25 between two cities and two states.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 I need to advise the Court what I advised my mayor
2 and my council when I was asked to assist in this lawsuit,
3 and that is I have a very personal interest in the outcome.
4 For the last 34 years I've lived in the same home in the
5 Fairmont Historic District in Bristol, Tennessee. My
6 children were reared there; my grandchildren visit there. So
7 the ultimate resolution of this lawsuit, the implementation
8 of a remediation plan that will achieve all of our goals, is
9 extremely important to me.

10 Now, Your Honor, you have two of the most
11 well-respected law firms in the United States before you
12 today, and besides the fact that they're better looking and
13 smarter than me, there is another difference.

14 In a very few minutes they're going to be going back
15 to Richmond and/or Roanoke. When I leave, I'm going to be
16 going back to my home of 34 years. I'm going to be going
17 back where I will have to look my neighbors, my friends, my
18 council, my mayor, and the entire constituency in the eyes
19 and say that this was a good settlement to a very complex and
20 difficult problem.

21 Your Honor, what this settlement accomplishes is the
22 following: First of all, it calls for permanent closure of
23 the landfill. That was not addressed in the DEQ order. I
24 think it may have been assumed, but it was not addressed.

25 Secondly, it implements the best remediation

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 template that we know of. All of the experts, Bristol
2 Virginia's and Bristol Tennessee's independent experts have a
3 consensus that this is the best plan moving forward.

4 The next thing it accomplishes is an extended time
5 period for continuous air monitoring, and Bristol, Virginia,
6 has already taken steps to implement that.

7 It also, Your Honor, leaves jurisdiction with this
8 Court which allows Bristol Tennesseans an avenue to enforce
9 this agreement if that need should ever arise, because
10 without this Court's intervention, Bristol Tennesseans would
11 be without recourse, and the DEQ order directs that there can
12 be no third-party enforcement.

13 When we look at the history of this case, when we
14 look at what Bristol, Virginia, has done and is continuing to
15 do, I would urge the Court that this is an appropriate
16 settlement.

17 There are, again, a lot of moving parts, and there
18 is going to be millions of dollars expended in the future.
19 Millions of dollars have already been expended. But I can
20 tell you, Your Honor, having seen my neighbors cover their
21 house with plastic, having seen them seal all the doors in
22 their homes except for one, having seen parents buying
23 expensive air filters for their children's bedrooms, I know
24 the pain that this incident has caused. But the good news
25 is -- and, again, I have skin in this game -- we're seeing

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 dramatic improvements.

2 As far as the malodor is concerned, we're seeing
3 improvements. As far as the VOCs, that's going to have to be
4 continued to be addressed. Mr. Kellogg is exactly correct.
5 Those levels need to be monitored and addressed as we
6 understand them more fully. But as far as what this
7 litigation can do, I believe this settlement encompasses
8 every positive factor that could be accomplished, and I would
9 urge the Court to approve the settlement.

10 THE COURT: Thank you, Mr. Dougherty.

11 Yes, sir.

12 MR. HOWARD: Good morning, Your Honor. Justin
13 Howard on behalf of Bristol, Virginia, along with Christian
14 Henneke. Bristol, Virginia, is also represented today by
15 Randall Eads who is the city manager an city attorney.

16 I don't have a lot to add. I agree with everything
17 that opposing counsel just said. When I first came in front
18 of Your Honor when my firm was first engaged in this matter,
19 I told Your Honor that we both agree, Bristol, Tennessee and
20 Bristol, Virginia, agree that this landfill quarry is a
21 problem, and we both agree on the solution, the
22 recommendations of the expert panel that was assembled by
23 Virginia DEQ.

24 Bristol, Virginia, has been committed to resolving
25 this problem. We may not agree on the legal claims and

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 defenses, and we may not agree on the ascertains by some of
2 the concerned citizens, but we do agree that the odor problem
3 has been a big problem, and Bristol, Virginia, has worked
4 aggressively to fix it. Not just what's required by Virginia
5 DEQ or by this consent order, but also doing what our expert
6 witnesses, the world experts on high temperature landfills,
7 have recommended. And we have Dr. Craig Benson here with us
8 in the courtroom to address any specific questions that the
9 Court may have. Bristol, Virginia, consulted him because he
10 was the leading expert on the DEQ panel.

11 At the insistence of our experts, one example of
12 going above and beyond the minimum requirements of the order
13 is that with the dual extraction wells that pull the liquid,
14 which is the problem in the landfill, and the gases that are
15 the problem from the landfill, those dual extraction wells,
16 five of them are required by the consent decree with Virginia
17 DEQ. We've already installed 16 of them.

18 The sidewall odor mitigation system that's required
19 to be completed by the end of this month, it goes around the
20 entire perimeter of the landfill and addressed the three
21 chimneys that were causing the bulk of the bad odor, has
22 already been installed, has been largely connected, and
23 should be on line completely extracting that sidewall odor
24 problem by late this afternoon or tomorrow, ahead of the end
25 of the month deadline.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 So Bristol, Virginia, is dedicated to solving this
2 problem. They're committed to it, but it's a big expensive
3 problem, and every day the lawyers are doing battle in courts
4 takes money away from solving this big expensive problem. So
5 we'd ask that the Court, for the reasons contained in our
6 submissions and for the reasons stated here today, we'd ask
7 that the Court approve the settlement.

8 THE COURT: Thank you, Mr. Howard. Let me ask you a
9 question or two.

10 MR. HOWARD: Yes, sir.

11 THE COURT: One of the questions that I have is the
12 cost of remediation. I recognize, having lived here over 50
13 years, that Bristol, Virginia, has had difficulty in terms of
14 it's finances in the past, and I am concerned about the
15 figures that I've seen in the news media expressing
16 estimations of the cost of the remediation, including the
17 states's consent decree.

18 Can you give me any satisfaction or information
19 about the expectations of the City of Bristol, Virginia,
20 about how it's going to pay for all of this in the future?

21 MR. HOWARD: Your Honor, it's my understanding that
22 Bristol, Virginia, has discussed this with state officials to
23 get money allocated. As of yesterday, we were notified that
24 the first \$2 million, I believe, that was set aside to
25 address this issue will be released very soon. Randy Eads

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 can address the particulars of what the anticipated budget is
2 and what the plan is for satisfying that.

3 THE COURT: Well, if Mr. Eads is available and
4 wishes to, if you could call him as a witness, I'd be glad to
5 listen to that.

6 MR. HOWARD: Very well, Your Honor. Mr. Eads.

7 THE COURT: Mr. Eads, if you'd stand before the
8 clerk and be sworn, please.

9 RANDALL EADS, called by the Defendant, having been
10 first duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HOWARD:

13 Q. Good morning, Mr. Eads.

14 A. Good morning.

15 Q. Could you state your name for the record?

16 A. Randall Eads.

17 Q. What's your position?

18 A. I'm the city manager and city attorney for Bristol,
19 Virginia.

20 Q. You were present in the courtroom and heard the questions
21 raised by the Judge regarding the budget for addressing the
22 remediation efforts at the quarry landfill and also how
23 Bristol, Virginia, plans to address that?

24 A. Yes.

25 Q. What is Bristol, Virginia's plan?

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 A. Well, first I'd like to say, you know, I recognize the
2 Judge's concerns about Bristol, Virginia's finances. Over
3 the years Bristol, Virginia, has been notorious for bad
4 fiscal management. When I came on board in 2017, Bristol,
5 Virginia, had roughly \$8.3 million in the bank. As of June
6 30th, 2022, we had over \$26 million in the bank. We made
7 significant strides since 2017.

8 But in regard to the landfill specifically, there
9 are -- I recognize there are wide estimates as to what this
10 is going to cost. As we get estimates from other engineers
11 and as we bid things out, the prices come back more than what
12 has been expected, but we do have a plan.

13 We've been working with Davenport and Associates,
14 who are our financial advisors, on helping us pay for this.
15 We expect the total cost to be somewhere between \$50 million
16 and \$60 million.

17 The first part has been paid for by the city. The
18 city has roughly expended a little over \$7 million of our own
19 money right now. Plus we've expended I think \$8.9 million of
20 ARPA money. So there has been roughly about \$15 million that
21 the city has expended on this project so far.

22 We're working with our state delegation to secure
23 more funding for this landfill. We're asking the state
24 officials for over \$30 million to help us with this.
25 However, if we're unable to get that, we do have a plan to

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 borrow funds, if necessary.

2 THE COURT: Do you believe that Bristol, Virginia,
3 would be able to borrow the funds necessary to pay for the
4 cost, assuming that it was not able to get state or federal
5 money?

6 THE WITNESS: Yes. Based on the conversations we've
7 had with our financial advisers, we do believe we could
8 borrow the funds.

9 THE COURT: All right. Any other questions?

10 MR. HOWARD: No. Well, I will ask one more.

11 BY MR. HOWARD:

12 Q. When Bristol, Virginia, is engaged in litigation over
13 this matter, what does that do to available funds for
14 addressing the odor mitigation efforts?

15 A. It takes away the funds that we have to put towards
16 projects. I've very much enjoyed working with McGuire Woods.
17 I think y'all are absolutely the best law firm in the
18 Commonwealth of Virginia and probably the nation, but paying
19 McGuire Woods every month is expensive, and it's something
20 that -- you know, it's a burden on our citizens when we have
21 to pay those from taxes. It's not coming out of my pocket.
22 It's not coming out of our employees' pockets. It's coming
23 out of our taxpayers' pockets.

24 MR. HOWARD: Thank you, Mr. Eads.

25 THE COURT: Thank you.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 Mr. Dougherty, do you have any questions?

2 MR. DOUGHERTY: I do not, Your Honor.

3 THE COURT: All right. Thank you, Mr. Eads.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: I'm advised that there is a requirement
6 that the proposed decree be presented to a federal agency
7 under the applicable statutes, and I wonder if counsel could
8 enlighten me in that regard.

9 MR. LACY: Good morning, Your Honor. Michael Lacy
10 on behalf of the plaintiff, Bristol, Tennessee. Your Honor,
11 as the Court is aware, we sued under two federal statutes as
12 well as asserted a common law negligence claim.

13 Under one of the federal statutes, the Clean Air
14 Act, when a private lawsuit, such as this, is brought, before
15 a consent judgment or consent settlement is reached, EPA is
16 entitled to 45 days notice of it. That provides them an
17 opportunity to comment, if it so chooses.

18 So what we would propose to do, subject to the
19 Court's approval and assuming the Court is agreeable to the
20 consent order presented by the parties, we would send it to
21 the EPA either today or tomorrow to start that 45-day clock
22 running as well as reach out to the EPA to see if we can't
23 have them confirm one way or the other whether they have any
24 issues with the proposed consent judgment.

25 I'll note for the Court that pursuant to the Clean

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 Air Act, we did provide notice of the lawsuit when it was
2 filed to EPA, and they have not taken any action here to date
3 with respect to the lawsuit. So while we don't know for
4 certain, based on events to date, we don't anticipate EPA
5 having any issues with the consent judgment.

6 THE COURT: Well, just to make that clear, what
7 you're saying is that the parties would propose that before
8 the Court accepts the agreement that you give notice to the
9 Environment Protection Agency of the U.S. government and wait
10 45 days, or at least 45 days, to see if the EPA has any
11 comments on the proposed settlement; is that correct?

12 MR. LACY: Yes, Your Honor. Sorry for not being
13 that clear. I should also make it clear that we have to send
14 it to the EPA and the Department of Justice as counsel for
15 the EPA. So we'll make sure, should the consent order be
16 acceptable to the Court, that it is sent to both those
17 entities.

18 And, yes, we would propose that the order be entered
19 or become effective 45 days after service unless we're able
20 to speak to the EPA and DOJ in advance and get their sign off
21 in which case we would notify the Court.

22 THE COURT: Well, it seems to me that it would
23 probably be more prudent for me to simply ask that you
24 proceed with your notice to the EPA and the Department of
25 Justice before I make a decision, because while you believe,

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 and maybe with good cause, that the EPA will not have any
2 comments, and by comments I assume they may say this is not
3 what we think should be done, and I would want to hear that.
4 In other words, I would want to consider that along with what
5 I've heard today and what I know about the case before I
6 actually approve the settlement.

7 So I think the appropriate procedure would be for me
8 to take the matter under advisement, and we'll wait for the
9 EPA to either comment or for the time, 45 days, to run. Then
10 assuming that there is no further developments and the Court
11 has no further questions, then I would proceed to announce my
12 ruling on the approval of the settlement.

13 MR. LACY: That sounds good, Your Honor.

14 MR. HOWARD: Your Honor, let me just add that we
15 agree with the proposal of Bristol, Tennessee, to do this,
16 and we would propose submitting a revised proposed order that
17 reflects the fact that that notice has been given.

18 And I would just inform the Court that the EPA
19 participates in weekly calls with Bristol, Virginia, and DEQ
20 to discuss the status of the remediation efforts, so they're
21 fully informed about what's been going on, but I agree with
22 opposing counsel that this notice is required.

23 THE COURT: All right. Thank you. Anything further
24 from counsel?

25 MR. LACY: Nothing further from plaintiff.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 MR. HOWARD: Nothing from Bristol, Virginia, Your
2 Honor.

3 THE COURT: All right. Well, thank you very much,
4 counsel, for your presentations today. In accord with the
5 conversation we've just had, I'm going to take the joint
6 motion for approval of the settlement agreement under
7 advisement, meaning that I'm not going to rule on it yay or
8 nay until we hear from the EPA or the 45 days has run. I'm
9 sure counsel will keep the Court advised in that regard.
10 Then once that's done, then I will rule.

11 I want to say that I certainly consider this an
12 important matter. That's why I scheduled this hearing today
13 to assist me in making that decision, and I would not make
14 any decision lightly.

15 Again, I think this has been a tragedy for the
16 cities, of course, but more important for the individual
17 citizens of these cities that have gone through various rough
18 times in the past but unfortunately have been presented with
19 this issue, which has been expensive. Again, more
20 importantly, it has affected individuals throughout the two
21 cities. Accordingly, I want to make the correct decision
22 even though it's going to take a little more time.

23 I want to thank counsel. I want to thank our
24 citizen for his input which I will certainly consider.

25 If there is nothing further, we will recess court.

—Bristol, TN v. Bristol, VA (1:22cv23) - Hearing Held on 6/13/23—

1 (The proceedings concluded at 10:29 a.m.)

2
3 CERTIFICATION

4
5 I certify that the foregoing is a correct transcript
6 from the record of proceedings in the above-entitled matter.

7
8
9 _____/s/_____

10 Cynthia L. Bragg

11 June 29, 2023

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Cynthia L. Bragg, Official Court Reporter